IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 609 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SANGITABEN YOGESHBHAI JANSARI

Versus

MAHESH BHAGWANJI JANSARI

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Appearance:

MS MEGHA R CHITALIA for Petitioner

MR NV ANJARIA for Respondent No. 1

Mr S P Dave, APP for Respondent No. 3

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 01/05/2001

ORAL JUDGEMENT

The petitioner above named, has preferred this Revision Application under Section 397 of the Code of Criminal Procedure, 1973 (for short, 'the Code')

challenging the judgment and acquittal order dated 27.11.1998 recorded by the learned Judicial Magistrate First Class, Bhuj in Criminal Case no.467/96 for offence under section 498-A, 506(2) read with section 34 of IPC under which the learned Magistrate acquitted present respondents no.1 and 2 from the aforesaid offence. The petitioner had filed a FIR before the Police against these two respondents showing that the respondents had closed the toilets and bathrooms and the petitioner was not permitted to use the same. It was also alleged that respondent no.1 and 2 used to claim dowry from the petitioner. It was further alleged that these respondents used to give threats to the petitioner and, therefore, the aforesaid FIR was filed. After investigation, charge-sheet was filed and the case was registered as Criminal Case no.467/96. After the conclusion of the trial, contesting respondents no. 1 and were acquitted by the aforesaid court by judgment and order dated 27.11.1998 holding that the case was not proved against the contesting respondent. Feeling aggrieved by the said judgment and acquittal order of the trial court, the petitioner has preferred this Revision Application before this Court under Section 397 of the Code. It has been mainly contended here that the trial court has not properly appreciated the evidence and, therefore, the judgment and acquittal order are illegal, erroneous and deserve to be quashed and set aside. The petitioner has, therefore, prayed that the present Revision be allowed and the judgment and acquittal order be set aside and the contesting respondents no.1 and 2 be convicted for the aforesaid offence.

2. During the hearing, learned Advocate for the petitioner, Ms. Megha Chitalia, has submitted that the trial court has not properly appreciated the evidence on record. Therefore, this Court has to interfere with the said findings of the trial court. At the same time, it would be required to consider provision of sub-section (3) of Section 401 of the Code which can be reproduced for ready reference:

> "(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction."

On a bare perusal of sub-section (3) of Section 401 of the Code, it becomes very clear that this Court exercising revisional jurisdiction and power under section 397 of the Code, cannot convert the finding of conviction in place of finding of acquittal. In other words, a person acquitted cannot be convicted by this

Court in Revision. In view of the above embargo, the prayer made by the petitioner for acquitting the contesting respondents cannot be granted by this court. No other prayer has been made in the relief clause of the Revision Memo.

3. Therefore, the prayer made in the prayer clause cannot be granted and, therefore, there is no reason to decide the matter on factual aspect. Even otherwise, this court cannot reappreciate evidence as a Court of Revision in view of the provisions of sub-section (3) of section 401 of the Code. In that view of the matter, I am of the opinion that the Revisional petitioner is not entitled to the relief claimed by her in the petition and, therefore, this Court has no alternative but to dismiss the same.

4. Mr S P Dave, learned APP appears for respondent no.3. He supports the above view and states that this court is not in a position to convict the contesting respondents no.1 and 2.

5. In the aforesaid view of the matter, this Revision Application is dismissed. Rule discharged.

1.5.2001 [D P Buch, J.]
msp